90-188

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

International Consulting Services, Inc.
Petitioner

vs.

Richard K. Gilbert, Esquire
Respondent

Petition for Writ of Certiorari

To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Protect the Integrity of The Supreme Court Bar: Should the United States Supreme Court take special notice of, and review, a case which involves allegations of conduct unbecoming a member of its own Bar -- including, but not limited to : conversion, theft, using stolen material (such material being the property of Plaintiff) in two cases before the United States Court of Appeals for the D.C. Circuit and in one case before the U.S. District Court for the District of Columbia, and refusing to pay amounts admittedly due under contract.

Violation of Right to Trial by Jury: In a diversity action, where a Plaintiff has plead three alternative causes of action (Breach of Contract, Quantum Meruit, and Conversion), and exercised its right to a Jury Trial -- May

the District Court Judge, without the benefit of a jury, dismiss the entire case for lack of minimum jurisdictional amount under its Count 1 (Breach of Contract) where: (a) the compensatory damages under Count 2 (Quantum Meruit) exceeded the jurisdictional minimum, (b) the compensatory damages under Count 3 (Conversion) exceeded the jurisdictional minimum, (c) the punitive damages sought in the case exceeded the jurisdictional minimum, (d) the punitive damages claim and the conversion claim each involve demands for unliquidated damages under which the "minimum jurisdictional amount" issue is inextricable bound up with the merits of the controversy, and (e) the case involves the allegedly tortious and criminal conduct of an attorney/Defendant who is a member of the bars of the District of Columbia and of the United States Supreme Court.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

INDEX TO APPENDICES iv

TABLE OF AUTHORITIES CITED v

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT . . . 17

BREACH OF CONTRACT 22

QUANTUM MERUIT 23

CONVERSION 26

PUNITIVE DAMAGES 28

SPLIT BETWEEN THE CIRCUITS 36

CONCLUSION 44

INDEX TO APPENDICES

A Court of Appeals Order granting Summary Affirmance (3/9/90)

B District Court Opinion dismissing Action (5/18/89)

C District Court Opinion denying Reconsideration (6/16/89)

D Court of Appeals Order denying Reconsideration (5/3/90)

E Text of Constitutional And Statutory Provisions Involved

F Amended Complaint

G Excerpts, Plaintiff's Answers to Defendant's Interrogatories

TABLE OF AUTHORITIES CITED

CASES:

Aiken v. United Broadcasting Co.,
238 A. 2d 588, 590 (D.C. 1968) 24

Arnold v. Troccoli,
344 F. 842 (2nd Cir 1965) 37

Attorney Grievance Commission v. Silk,
369 A.2d 70 (Ct App. Md 1977) 35, 36

Barry v. Edmunds,
116 U.S. 550 (1886) 37

Beacon Theatres, Inc. v. Hon. Harry C.
Westover, 359 U.S. 500, (1959) 20

Bell v. Preferred Life Assur. Soc. of
Montgomery Alabama, 320 U.S. 238 (1943) . . 36, 37

Brown v. Coates,
102 U.S. App. D.C. 300, 253 F.2d 36 (1958) 29, 30, 34

Brown v. Donielson,
334 F.Supp. 294 (S. D. Iowa, 1971) 39

Browning-Ferris Industries of Vermont Inc.
v. Kelco Disposal, Inc, 109 S. Ct. 2909
(June 26, 1989) 29, 33

Central Armature Works Inc. v. American Motorists Insurance Company, 520 F.2d 283 (D.D.C. 1980) 30, 34

Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry, No 88-1719 (U.S. Supreme Court, 3/20/90) 20

Cohen v. Hurley, 366 U.S. 117 (1961) 18

Deutsch v. Hewes Street Realty Corp., 359 F.2d 96 (2nd Cir., 1966) 40

Dimick v. Schiedt, 293 U.S. 474 (1935) 20

Financial General Bankshares Inc. v. Metzger, 523 F. Supp. 744 (D.D.C. 1981) . . 30, 34

Fireman's Fund Ins. Co. v. Railway Express Agency, 253 F. 2d 780 (6th Cir., 1958) 41

Horne v. Francis I DuPont & Co, 428 F. Supp. 1271, 1275 (D.D.C. 1977) 27

Inber v. Ross, 479 A.2d 1256 (D.C. App. 1984) 24

In re Gilbert, 276 U.S. 294 (1928) 18

In re Snyder,
472 U.S. 642 (1985) 19

Jones v. Landry,
387 F.2d 102 (5th Cir 1967) 39, 42

Kahal v. J. W. Wilson & Associates, Inc.
218 U.S. App. D.C. 156, 673 F. 2d 547 (1982) . . 31

Lee v. Foote,
481 A.2d 484 (D.C. App. 1984) 24

Leehans v. American Employers Ins. Co.,
273 F.2d 72 (5 Cir. 1959) 42

Marbury v. Madison,
1 Cranch 137, 2 L. Ed. 60 (1803) 17, 39

Matter of Franklin,
365 A. 2d 1361 (Sup Ct. N.J. 1976) 36

Menchaca v. Chrysler Credit Corp.,
613 F.2d 507 (5 Cir., 1980) 39

Michael Del Balso, Inc. v. Carozza,
78 U.S. App. D.C. 56, 136 F.2d 280 (1943) 23

Middlesex County Ethics Committee v.
Garden State Bar Association,
457 U.S. 423 (1982) 19

Nat. Semiconductor v. Com'l Lovelace Motor
Freight, 560 F.Supp. 908 (N. D. Ill., 1983) 39

Nelson v. Keefer,
451 F.2d 289 (3rd Cir., 1971) 41

North American Graphite Corporation v. Allan,
184 F.2d 387, 389 (D.C. Cir. 1950) 23, 24

NTA National Incorporated v. DNC Services
Corporation, 511 F. Supp. 210 (D.D.C. 1981) . . . 23

Parker v. Stein,
557 A.2d 1319 (D.C., 1989) 27, 28

R. A Weaver & Associates Inc. v. Hass
& Haynie Corporation, 213 U.S. App. D.C. 404,
663 F.2d 168 (1980) 26, 27

Sansone v. Ocean Accident and Guarantee
Corp.,228 F. Supp. 554 (E. D. Louisiana, 1964) . 41

Sere v. Group Hospitalization Inc.,
443 A.2d 33 (D.C., 1982) 29

Shaffer v. Coty, Inc.,
183 F.Supp. 662 (S.D. Calif., 1960) 40

St. Paul Mercury Indemnity Co. v. Red Cab,
303 U.S. 283 (1938) 36

Sterling v. Marshall,
54 A.2d 353, 356 (D.C. 1947) 24

Turner v. Wilson Line,
242 F.2d 414 (1st Cir.1947) 42

TVL Associates v. A. & M. Construction Corp.,
474 A.2d 156, 159 (D.C. 1984) 24

Wade v. Rogala,
270 F.2d 280 (3rd Cir. 1959) 41

Washington v. Group Hospitalization Inc.,
585 F. Supp. 517 (D.D.C. 1984) 30, 34, 35

Webster v. Doe,
108 S. Ct. 2047 (6/15/88) 41

Zacharia v. Harbor Island Spa, Inc.,
684 F.2d 199 (1982) 37, 38, 42

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS:

28 U.S.C. 1254 2

28 U.S.C. 1332 . . . . . 1, 3, 6, 9

D.C. Code Section 22-3801 29

D.C. Code Section 22-3811 . . . . . 29, 33

D.C. Code Section 22-3812 29

Federal Rules of Civil Procedure,
Rule 8(e)(2) 24, 26

Federal Rules of Civil Procedure,
Rule 12(b)(1) 36

Rules of the Supreme Court,
Rule 8 . . . . . 16, 30

United States Constitution,
Article Three, Section Two 3, 17, 18

United States Constitution,
Fifth Amendment 3, 21

United States Constitution,
Seventh Amendment 21

OTHER AUTHORITIES:

Code of Professional Responsibility, Canon 1 . . . 35

Code of Professional Responsibility, EC 1-5 35

Code of Professional Responsibility,
DR 1-102(A)(4) 35

Corbin, Contracts,
sections 1106 & 1107 (1964) 24

Dobbs, Handbook on the Law of Remedies,
section 4.2 (1973) 24

Restatement (Second) of Contracts,
section 373 (1981) 24

The Federalist No. 22, Alexander Hamilton 39

The Federalist No. 78, Alexander Hamilton 39

The Federalist No. 80, Alexander Hamilton 18

The Federalist No. 83, Alexander Hamilton 18

Williston, Contracts, section 1454 (1970) 24

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Petition for Writ of Certiorari

Now Comes Petitioner, International Consulting Services, Inc., and respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals summarily affirming a United States District Court dismissal under 28 U.S.C. 1332(a).

OPINIONS BELOW

The Unpublished Order of the Court of Appeals appears in Appendix A to this Petition. The Unpublished Opinions of the United States District Court For The District Of Columbia appear in Appendix B and Appendix C to this Petition.

JURISDICTION

The Court of Appeals' Order in this matter was filed on March 9, 1990. A timely Petition for Rehearing was filed on April 5, 1990. The Court of Appeals' denial of the Petition for Rehearing was issued on May 3, 1990 and is set forth in Appendix D. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh and Fifth Amendements to the United States Constitution and 28 USC 1332 are fully set forth in Appendix E.

STATEMENT OF THE CASE

This case involves a dispute between International Consulting Services, Inc., ("Plaintiff") a small corporation offering to its clients the expert (disability) consulting services of Mr. Abraham Mazur[1] and Richard Gilbert, Esq.[2] ("Defendant"). In December 1983 the Plaintiff and

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[1] Mr. Mazur had been employed from 1948-1976 with the Social Security Administration as (successively) a Claims Examiner, a Claims Reviewer, a Disability Examiner, a Disability Reconsideration Examiner and a Disability Legal Assistant [Plaintiff's Answer to Defendant's Interrogatory 10].

[2] Until commencement of his relationship with Mr. Mazur, Mr. Gilbert had "concentrated his practice in the area of criminal defense work" and had "received no income" from handling any Social Security, personal injury or other disability cases [Defendant's Answers to Plaintiff's Interrogatory 3 & 4].

the Defendant placed a yellow pages ad including specialties in specialties in "social security", "personal injury accidents" and "workman's compensation" and stating "Expert Consultant Available". Plaintiff was to provide all disability consulting services and other legal support services under any matters attracted by this ad -- and was to be paid 50% of all fees generated by these matters. [Plaintiff's Answer to Defendant's Interrogatory 11]. This relationship continued for about a year, and attracted a number of disability cases. In December 1984 the Defendant secretly changed his yellow pages advertising for the following year -- keeping the disability specialty claims but deleting the "Expert Consultant Available" language [Plaintiff's Answer to Defendant's Interrogatory 47]. At the same time as he was deleting this yellow pages reference, the Defendant was giving

Plaintiff various assurances and encouragement to continue working on a number of "large fee" cases [Plaintiff's Answer to Defendant's Interrogatories 47]. In January 1985, the Defendant breached his agreement with the Plaintiff and "terminated" their relationship. [Plaintiff's Answer to Defendant's Interrogatory 48-50]. Plaintiff thereupon, in an effect to mitigate damages, instructed Defendant to return, and make no further use of, Plaintiff's workproduct [Plaintiff's Answer to Defendant's Interrogatory 54].

This Action was originally filed pro se in the United States District Court for the District of Columbia in January 1988. Plaintiff's original Counsel entered the case in February 1988 and filed an Amended Complaint. From that time until the close of discovery on March 31, 1989, the parties engaged in a discovery process which

could only have been described as comprehensive and exhaustive. At the close of discovery Defendant filed a Motion To Dismiss For Lack Of Jurisdiction Under 28 U.S.C. 1332(a).

The Amended Complaint filed by Plaintiff's original counsel in February, 1988 stated three causes of action (Breach of Contract, Quantum Meruit, and Conversion), and demanded a Trial by Jury.

Compensatory Damages were plead in the Amended Complaint, as follows:

Breach of Contract	$ 14,162.55
Quantum Meruit	$ 12,750.00
Conversion	$ 100,000.00

Punitive Damages were plead in the Amended Complaint at One Hundred Thousand Dollars ($100,000).

When discovery closed on March 31, 1989, the record indicated (through sworn answers to interrogatories and documentary evidence provided in response to Defendant's discovery requests) that Plaintiff's quantum meruit compensatory damages actually totalled Fourteen Thousand Nine Hundred Eighty-Seven Dollars and Fifty Cents ($ 14,062.50) as follows:

Interrogatory Number	Matter	Hours
24	Ransom Webb	5.58
25	Muriel Brewster	6.42
26	Mary Sweeney	6.00
27	Jane Morris	90.00
28	Edna Sykes-Smith[3]	19.75
29	Ralph Ferraiuolo	16.50

[3] Defendant is entitled to a credit of $375.00 on the matter [see Plaintiff's Answer to Defendant's Interrogatory 41].

30	Roland Outlaw	137.00
	TOTAL	281.25
		x $50/hr
		$ 14,062.50

Plaintiff's estimates of his "conversion damages" and of reasonable punitive damages remained unchanged.

Immediately following the close of discovery, the Defendant filed a Motion to Dismiss alleging that Plaintiff's "breach of contract damages" were under $10,000.00 -- and thus that the Court lacked jurisdiction pursuant to 28 U.S.C. 1332(a).

Defendant's argument was that the Roland Cutlaw Case "had been lost", and that since $7,421.06 of the Plaintiff's $14,162.55 Breach of Contract damages were

attributable to the Roland Outlaw Case, Plaintiff's "Breach of Contract case" did not meet the $10,000.00 jurisdictional minimum.

Plaintiff both disputed the Defendant's interpretation of the facts, and pointed out that (even if the Defendant's interpretation were adopted by the Court) the Plaintiff's quantum meruit damages, conversion damages, and punitive damages each exceeded $10,000.00.

After the Defendant (with tortious and criminal intent) breached his contract with the Plaintiff and thereby effectively prevented Plaintiff's further performance thereunder, the Defendant did, in fact, "lose" the Roland Outlaw case before the United States Court of Appeals. The Roland Outlaw case, however, was not

"over".[4]

With the help of the Plaintiff and another attorney, the Roland Outlaw case was revived before the Social Security Administration based on arguments originally formulated by the Plaintiff, and rejected by the Defendant. The Roland Outlaw case remains pending before a Social Security Administration Administrative Law Judge -- a final determination not yet having been rendered.

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[4] The contract between the Plaintiff and the Defendant herein stipulated that Plaintiff's performance was to commence with the acceptance of a case, and was to continue through its "final legal adjudication".

> The Plaintiff was to provide disability consulting services on all matters generated by Defendant's new yellow pages ad and other efforts at marketing this new specialty. Once a case was accepted, work under that case was to continue until its final legal adjudication. [Plaintiff's Answer to Defendant's Interrogatory 12].

Additionally, Plaintiff argued that the Defendant's position that the Roland Outlaw case "had been lost" was: (1) irrelevant to Plaintiff's claim of entitlement to quantum meruit damages due to the willful criminal prevention of his performance by the Defendant, (2) irrelevant to Plaintiff's claim of entitlement to conversion damages, and (3) irrelevant to Plaintiff's claim for punitive damages.

On May 18, 1989 District Court dismissed this case for lack of the jurisdictional minimum, stating that Plaintiff and his original attorney knew or should have known that the Outlaw case had been "lost" and that therefore, their breach of contract action damages could not have exceeded $10,000.00.

In footnote 1 of his decision, the District Court simply, and without discussion, refused to consider any

possibility that the Plaintiff could have proven quantum meruit or conversion at trial.

Finally, on page 4 of its opinion, the District Court concluded that "punitive damages clearly are not available in this case" based on his reading of "the undisputed facts presented to the Court". The Order, however, did not detail these allegedly "undisputed facts". Furthermore, the record was filled with facts and factual allegations which could have supported a punitive damage claim depending upon the judgment of the jury. Examples of such allegations (as set forth in Plaintiff's pleadings and answers to discovery) are as follows:

1. Plaintiff's fee under the subject contract was to be calculated and paid after each matter's "final legal adjudication". Similarly, to ensure that each matter was pursued in a manner which would best serve the disabled

client, the parties agreed that the Defendant would continue to solicit and rely upon Plaintiff's expertise through the legal end of each client matter undertaken by them.

2. Plaintiff was the disability expert under the subject agreement. Conversely, the Defendant had absolutely no disability experience -- but rather had concentrated his practice primarily in the area of criminal law and relied completely on Plaintiff in these disability matters.

3. Under the arrangement between the parties, Plaintiff screened all potential disability cases, examined the entire record, and gave the Defendant his expert opinion regarding: the merits of the case, the likelihood of success, and the likelihood of receiving an attorneys fee award. Additionally, the Plaintiff provided the Defendant

with ongoing advice and guidance, both orally and in writing, throughout the pendency of the action.

4. While accepting the benefits of Plaintiff's efforts and experience, Defendant has flagrantly refused to pay Plaintiff even the amounts admittedly owed by him. Portions of this amount have been owed (in liquidated sums) since 1984/85.

5. For most of the matters which the parties worked together, the Defendant failed to make accountings to the Plaintiff of fees collected pursuant to their agreement, and failed to pay Plaintiff his share of those fees which were received.

6. While at the same time the Defendant was advising Plaintiff that their relationship would continue, he secretly placed a new "yellow pages" ad which excluded all references to the Plaintiff.

7. In an effort to exclude the Plaintiff from a very substantial anticipated recovery in the Outlaw, Morris, Sykes-Smith, and Ferraiuolo cases, Defendant deliberately made impossible time demands, deliberately prevented Plaintiff's performance, and then used Plaintiff's inability to meet those demands as a pretext for terminating their relationship.

8. Defendant acted with tortious and criminal intent when he continued to use Plaintiff's workproduct after the Defendant acknowledges receiving Plaintiff's January 17, 1985 telegram forbidding its further use. Plaintiff's telegram followed Defendant's willful breach of contract severing his ongoing relationship with the Plaintiff.

Nonetheless, the District Court granted the Defendant's Motion to Dismiss, and the Court of Appeals summarily affirmed the dismissal.

This dismissal violates the Plaintiff's constitutional right to a trial by jury and his constitutional right to due process. Furthermore, since the Defendant in this case is a member of this Court's Bar, this Court ought to examine this matter with special scrutiny (C.f. Rule 8, United States Supreme Court).

REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should be granted in this case because the actions of the courts below have so far departed from the accepted and usual course of judicial procedures as to call for an exercise of this Court's power of supervision.

While the both District Court's Orders and the Appeals Court's Orders fail to squarely address these important issues,[5] the effect of those Orders is to deny Plaintiff his Due Process, to deny Plaintiff his right to a Jury Trial, and to conflict with various decisions from other Circuits on these issues.

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[5] Article III Section 2(2) provides that the Supreme Court has appellate jurisdiction as to both law and the facts. See also: Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60 (1803) ("The judicial power of the United States is extended to all cases arising under the constitution").

This case ought to be heard by the Supreme Court for the following reasons:

1. This case ought to be heard by the Supreme Court so to resolve various serious allegations against the integrity and conduct of a member of the Supreme Court Bar -- allegations of matters which would tend to bring the legal profession into disrepute.[6]

2. This case ought to be heard by the Supreme Court in order to settle a conflict between the various Circuits concerning when it may be proper for a Court may dismiss a jury action for lack of the minimum jurisdictional amount.

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[6] Plaintiff further contends that due to the seriousness of these matters, this Court should exercise its equitable and general supervisory powers to order that the Defendant appear and answer (under oath) the charges made against him. [Article III, Section 2(1)(a); Federalist Nos. 80 and 83, Hamilton].

See also: In re Gilbert, 276 U.S. 294 (1928). C.f. Cohen v. Hurley, 366 U.S. 117 (1961).

3. "The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice."[7] The "inherent power" of the Courts to supervise, suspend or debar lawyers "derives from the lawyer's role as an officer of the court which granted admission".[8]

4. "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be

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[7] Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 434 (1982).

[8] In re: Snyder, 472 U.S. 642, 644 (1985).

scrutinized with the utmost care."[9]

By its orders of May 18, 1989 and June 16, 1989 the District Court effectively precluded the jury from deciding the following matters which should have been left to their judgment:

- Factual decisions and inferences relating to whether or not the Defendant prevented the Plaintiff's contract performance in a manner which would permit quantum meruit damages in accordance with applicable D.C. precedent.

- Factual decisions and inferences relating to the Defendant's motivation and intent, and especially concerning his allegedly tortious and criminal behavior

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[9] Beacon Theatres, Inc. v. Hon. Harry C. Westover, 359 U.S. 500, 501 (1959) quoting Dimick v. Schiedt, 293 U.S 474, 486 (1935). C.f. Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry, No 88-1719 (3/20/90)(Opinion of Justice Brennan at page 7) ("If in the rare case a tiebreaker is needed, let us break the tie in favor of jury trial")

and intent.

- Factual decisions and inferences relating to the appropriate measure of punitive damages in this case.

The Plaintiff herein asserts that the Defendant has violated not only the Canons of Ethics applicable to his profession, but also the strong public policy that a member of this Court's Bar must be honest, must not be deceitful and must keep his word and honor his contracts.

As such, the District Court's decision to keep the issues of breach of contract, quantum meruit, conversion and punitive damages from the jury violated Plaintiff's Seventh Amendment right to a Trial by Jury and Plaintiff's Fifth Amendment right to Due Process.

Breach of Contract

It is true that if one were to measure the Plaintiff's breach of contract damages by what the "contract price" would have been if the Defendant had not breached the contract, then the Plaintiff's breach of contract damages would not have exceeded ten thousand dollars. But that is not what happended in this case.

In this case, the amount of money which the Plaintiff was to receive under the contract was dependant upon the profitability of his undertakings with the Defendant. In such cases in the District of Columbia, the rule is clear -- a Defendant who breaches the contract, and prevents the further performance of the Plaintiff, cannot escape his wrongdoing by arguing that the contract turned out not to be profitable. Instead, in the District of Columbia, the Defendant must pay the Plaintiff "breach

of contract damages" which are equal to the amount which the Plaintiff would have received in quantum meruit. See e.g. NTA National Incorporated v. DNC Services Corporation, 511 F. Supp. 210,223 (D.D.C. 1981) and Michael Del Balso, Inc. v. Carozza 78 U.S. App. D.C. 56, 136 F.2d 280 (1943).

In any case, the precise measure of the Plaintiff's damages is a matter for a jury to decide after hearing all the evidence, and not a matter to be pre-empted by a judge who might personally favor one damage approach over one another.

Quantum Meruit

In the District of Columbia (as elsewhere) actions for breach of contract and quantum meruit may appropriately be pursued in the same lawsuit. See e.g. North American Graphite Corporation v. Allan, 184 F.2d

387, 389 (D.C. Cir. 1950). C.f. Federal Rules of Civil Proceedure, Rule 8(e)(2) permitting (and indeed encouraging) the pleading of alternative counts.

Furthermore, in the District of Columbia, where a Defendant wrongfully terminates a contract, and usual breach damages are not sufficient to equitably compensate the Plaintiff, quantum meruit or ("restitution") relief may be awarded by the Judge or Jury hearing the merits. See e.g. Lee v. Foote, 481 A.2d 484, 485 (D.C. App. 1984) and the authorities cited therein[10].

Even without these special circumstances, a clear case of "unjust enrichment" could certainly be supported

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[10] Inber v. Ross, 479 A.2d 1256, 1263 (D.C. 1984); TVL Associates v. A. & M. Construction Corp., 474 A.2d 156, 159 (D.C. 1984); Aiken v. United Broadcasting Co., 238 A. 2d 588, 590 (D.C. 1968); Sterling v. Marshall, 54 A.2d 353, 356 (D.C. 1947); 12 Williston On Contracts 1454 at page 14 (1970); D. Dobbs, Handbook on the Law of Remedies at section 4.2 (1973); 5 Corbin on Contracts at sections 1106 & 1107 (1964); and Restatement (Second) of Contracts section 373 (1981).

here where the Defendant: (a) collected fees on matters where Plaintiff acted as his consultant, (b) admittedly owes Plaintiff at least half of said collected fees, (c) has steadfastly refused to pay said fees to Plaintiff in violation of their agreement, and (d) now attempts to unilaterally disavow his contract and all his contractual obligations with Plaintiff.

Finally, in closing, one additional jurisdictional fact which was totally overlooked by the District Court in its Opinion was the fact that the Defendant's Answer attacked the viability of the instant contract[11] -- leaving quantum meruit as a potentially necessary remedy for the

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[11] Two defenses alleged by the Defendant in this case were "Lack of Privity of Contract" (third affirmative defense) and "Statute of Frauds" (fifth affirmative defense).

If either of these defenses were accepted, there would be no contract to breach and enforce -- and the Plaintiff's action would necessarily be in quantum meruit.

plaintiff in this case.

Conversion

As with alternative actions claiming breach of contract or quantum meruit, alternative actions claiming breach or conversion are encouraged by the the caselaw and rules. See Federal Rules of Civil Procedure, Rule 8(e)(2). See also: R. A Weaver & Associates Inc. v. Hass & Haynie Corporation, 213 U.S. App. D.C. 404, 663 F.2d 168, 173 and at footnote 43 (1980)("A plaintiff need only aver title or ownership in himself to support a cause of action for conversion....If the question of ownership is disputed, it becomes a jury question").

Indeed in R.A. Weaver, supra, the D.C. Court specifically sanctioned a finding and award of both compensatory and punitive damages under "conversion"

even though the defendant argued that it had simply "breached" its contract to pay for the property in question. Conversion lies where the Defendant rightfully obtains possession of the subject property, and then wrongfully refuses to return said property upon demand. Id. This is true even where the Defendant originally took possesion of the property pursuant to the contract. See also Horne v. Francis I DuPont & Co, 428 F. Supp. 1271, 1275 (D.D.C. 1977).

Finally punitive damages in the District of Columbia are available for such a refusal where the facts show a willful disregard of the Plaintiff's rights. See R.A. Weaver, supra and Parker v. Stein, 557 A.2d 1319 (D.C. 1989).

Punitive Damages

With respect to the punitive damages being sought, the following special circumstances were alleged and required rulings which only the jury could render regarding the following:

- The conversion of Plaintiff's work product was done in a manner which showed a "... willful disregard of plaintiff's rights or other circumstances tending to aggravate the injury" See e.g. Parker v. Stein, 557 A.2d 1319 (D.C., 1989).

- By the tortious and criminal intent of the Defendant as shown by his continued unauthorized use of Plaintiff's workproduct and continued refusal to pay even sums which were admittedly due and owing, the Defendant's "breach of contract" in this case "merges with and assumes the character of a willful tort"[See e.g.

Brown v. Coates, 102 U.S. App. D.C. 300, 303, 253 F.2d 36, (1958) and Sere v. Group Hospitalization Inc., 443 A.2d 33 (D.C., 1982)], and indeed allegedly violated Sections 22-3801, 22-3811 and 22-3812 of the DC Code (Theft).[12]

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[12] See Opinion of Justice O'Conner in Browning-Ferris Industries of Vermont Inc. v. Kelco Disposal, Inc, 109 S. Ct. 2909 at 2924 (June 26, 1989):

> "Third, because punitive damages are penal in nature, the court should compare the civil and criminal penalties imposed ... the court should consider not only the possible monetary sanctions, but also any possible prison term."

- The gross violation of the Defendant's own higher standard of professional ethics[13] demands due consideration of a punitive judgement award. See Brown v. Coats, 102 U.S. App. D.C. 300, 303, 253 F.2d 36 (1958), Central Armature Works Inc. v. American Motorists Insurance Company, 520 F.2d 283, 292 (D.D.C. 1980), Financial General Bankshares Inc. v. Metzger, 523 F. Supp. 744 (D.D.C. 1981) and Washington v. Group Hospitalization Inc., 585 F. Supp. 517 (D.D.C. 1984).

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[13] This Court has a special interest in insuring the ethics of the members of its bar (Rule 8, Rules of the Supreme Court).

The record below contains serious allegations regarding the conduct and ethics of a member of this Court's bar.

These allegations of conversion and theft, if proven in a court of law, would not only violate the Code of Professional Responsibility, but would also constitute violations of the criminal law.

Such conduct should not be sanctioned either explicitly or implicitly by the judiciary.

Instead, the District Court took it upon itself to dismiss the action without an evidentiary hearing -- and in its Order did not address any of the special circumstances alleged by the Plaintiff.

In doing so, the Court relied heavily on the decision of the U. S. Court of Appeals for the District of Columbia in Kahal v. J. W. Wilson & Associates, Inc. 218 U.S. App. D.C. 156, 673 F. 2d 547 (1982) which held that punitive dmages would not be available in a breach of contrqact case where the only thing that the plaintiff had plead was the defendant's "bad faith". That case is distinguishable, however, from this case in that (a) this case involves a breach which has taken the "the character of wilful tort" (i.e. conversion), and (b) this case involves a defendant who must be held to a higher standard than the routine defendant.

In that regard, perhaps the most important reason for the possible imposition of punitive damages in this case is the fact that the Defendant's alleged conduct was (if found as fact by the jury) utterly reprehensible for a member of this bar. As such, this Court has a particular institutional interest in protecting the integrity of its own bar.

Furthermore, in the District of Columbia Circuit, punitive damage awards have been permitted to stand where they serve one of the following three goals: to further redress the defendant's wrongs, to punish the

defendant's wrongful conduct, or to deter[14] others from engaging in such wrongful behavior.

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[14] The importance of awarding punitive damages both as a punishment of the defendant and as a future deterrent to others was recently reiterated by the Supreme Court in Browning-Ferris Industries of Vermont Inc. v. Kelco Disposal, Inc, 109 S. Ct. 2909 (June 26, 1989). Indeed, as evidenced by that opinion, this doctrine is as old as the common law and as current as this past Supreme Court term.

> "Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future and as proof of the detestation of the jury to the action itself'. Wilkes v. Wood, Lofft. 1, 18-19, 98 Eng. Rep. 489, 498-499 (K.B.)." Browning Ferris, at p. 2920 ftnte 20.

> "The wrongdoer could also be made to pay an additional sum 'on the ground that every evil deed inflicts a wrong on society in general' W. McKechie, Magna Carta 284-285 (1958)" Browning Ferris, at Opinion of Justice O'Conner, at p 2927.

In this case, the Defendant (a member of the bar charged with maintaining a high standard of ethics and honesty) has allegedly engaged in conduct which could well be viewed as a violation of DC Code 22-3811 when he wrongfully, knowingly and intentionally made "an unauthorized use" of ICS's property. Such a theft by an attorney is clearly a "harm to society" as well as to the Plaintiff hereunder. The imposition of punitive damages in a civil case does not depend upon the filing of a criminal complaint -- but rather can independently be effectuated as a civil punishment and deterrence of such wrongful behavior.

Accordingly, in cases where, as here, the defendant has a special relationship with the plaintiff[15] or where the defendant is bound to a higher standard of professional ethics to protect and ensure the public's utmost trust,[16] juries have special latitude to consider and award punitive damages. See e.g. Brown v. Coats, 102 U.S. App. D.C. 300, 303, 253 F.2d 36 (1958) (real estate agent), Central Armature Works Inc. v. American Motorists Insurance Company, 520 F.2d 283, 292 (D.D.C. 1980) (insurance agent), Financial General Bankshares Inc. v. Metzger, 523 F. Supp. 744 (D.D.C. 1981) (attorney). See Also: Washington v. Group Hospitalization Inc., 585 F. Supp. 517 (D.D.C. 1984), where the District Court quite properly refused to grant summary judgement against a

---

[15] In this case the plaintiff and the defendant were partners with a 50-50 fee sharing arrangement.

[16] In this case the defendant was an attorney -- and a member of this Court's bar.

punitive damage claim declaring:

> Defendants argue that punitive damages are inappropriate here because their conduct did not rise to the level of oppressive, willful, and wanton conduct as that of the insurer in Central Armature Works Inc. v. American Motorists Insurance Company, 520 F. Supp 283 (D.D.C. 1980). However, the Central Armature Works facts do not exhaust the types of fact situations in which punitive damages may be awarded by a jury.

(Id. at page 522).

Defendant's arguments below that the plaintiff was not a client of his and that therefore exemplary damages should not lie, ignore the seriousness of the allegations made against the Defendant -- and the fact that an attorney's duty to act in accordance with his/her ethics transcends the attorney-client relationship. See e.g. Canon 1, EC 1-5, and DR 1-102(A)(4). See Also: Attorney Grievance Commission v. Silk, 369 A.2d 70 (Ct App. Md 1977) (Disbarred Attorney for misappropriation of club

funds ($4,621.77) when he was not acting as its lawyer, but rather as its treasurer and president) and Matter of Franklin, 365 A. 2d 1361 (Sup Ct. N.J. 1976) (Suspended Attorney for submitting false expense reports to his employer when he was not acting as its lawyer, but rather as its president).

Split Between The Circuits

Dismissals under Rule 12(b)(1) may only be ordered when it appears "to a legal certainty" that the jurisdictional minimum cannot be met. See e.g. St. Paul Mercury Indemnity Co. v. Red Cab, 303 U.S. 283, 288-289 (1938).

In determining whether or not that jurisdictional minimum cannot be met, both compensatory and punitive damages must be considered by the court. See e.g. Bell

v. Preferred Life Assur. Soc. of Montgomery Alabama, 320 U.S. 238, 240 (1943).

When punitive damages are involved, a case can only be dismissed for lack of jurisdictional amount if a verdict in excess of the jurisdictional minimum "would be excessive and set aside for that reason". Bell, supra. at 243 quoting Barry v. Edmunds, 116 U.S. 550, 565 (1886).

Nonetheless, the Courts must be careful not to use this jurisdictional process as a means of disposing of cases which they otherwise disfavor:

> And of course it would be improper for the judge to dismiss a case merely because he would not allow that amount were he to be the sole trier of the facts or because he would not permit a jury verdict in that amount to stand. Arnold v. Troccoli, 344 F. 842, 846 (2nd Cir 1965).
>
> We have not, however, held that defenses asserted on the merits may be considered and adjudicated on jurisdictional motions. Were the law otherwise, the orderly progress of litigation would be

> disrupted ... Issues going to a federal court's power to decide would be hopelessly confused with the merits themselves. Constitutional questions as to the right to have a jury determine factual issues would lurk in every jurisdictional motion. Zacharia v. Harbor Island Spa, Inc., 684 F.2d 199, 202 (2nd Cir., 1982).

In the years since St. Paul, supra numerous District and Appeals Courts have struggled trying to find a consistent rule for determining when a dismissal would be justified where punitive damages are being sought, or where the amount in dispute may depend upon which version of the facts (and inferences and conclusions drawn therefrom) which one may accept as being true. This topic has been hotly debated over an extended period of time, and many rather scholarly opinions have grappled

with its nuances[17]

These courts, and others, have all been faced with the rather inconsistent state of the law among the lower courts[18] concerning exactly how to treat a case in this posture.

---

[17] See e.g. Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 516-518 (dissent of J. Garza) (5 Cir., 1980), Nat. Semiconductor v. Com'l Lovelace Motor Freight, 560 F.Supp. 908, 910-911 (N. D. Illinois, 1983), Brown v. Donielson 334 F.Supp. 294, 299-300 (S. D. Iowa, 1971), and Jones v. Landry, 387 F.2d 102, (5 Cir., 1967).

[18] Such inconsistencies in matters as basic as how and when a Federal Court may decide whether or not it has jurisdiction should not be tolerated.

> To avoid an arbitrary discretion in the Courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them. Federalist, No. 78 (Hamilton).

See also, Federalist, No. 22 ("To produce uniformity in these determinations, they ought to be submitted in the last resort, to one Supreme Court"). The Supreme Court, in turn, has the duty to resolve these doubts, and "to say what the law is". C.f. Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is").

Some courts have suggested that the right to a jury trial requires that such challenges to the jurisdictional amount must be resolved by the jury:

> [T]o allow a district court judge to value a plaintiff's claim in a case which involves a demand for unliquidated damages and in which the jurisdictional issue is inextricable bound up with the merits of the controversy is tantamount to depriving the plaintiff of his present statutory right to a jury trial. Deutsch v. Hewes Street Realty Corp., 359 F.2d 96, 100 (2nd Cir., 1966).

> [I]n actions at law where trial by jury is a matter of right, a challenge to the jurisdictional amount may not be adjudicated summarily in the face of timely objection by a party, but must be tried plenarily and submitted for jury determination. Shaffer v. Coty, Inc., 183 F.Supp. 662, 667 (S.D. Calif., 1960).

Other courts have gone to the other extreme and ruled that there is simply no right to a trial by jury for such "jurisdictional" issues:

We are not persuaded by the argument that a

termination prior to trial deprives a "plaintiff of his present statutory right to a jury trial." See Deutsch v. Hewes Street Realty Corp, supra, 359 F.2d at 100. Nelson v. Keefer, 451 F.2d 289, 293 (3rd Cir., 1971).

Since this determination is one of jurisdictional fact, there is no right to have it tried before a jury. Sansone v. Ocean Accident and Guarantee Corp.. 228 F. Supp. 554, 558 at ftnte 5 (E. D. Louisiana, 1964).

Still other courts have expressed a deep concern when weighing these issues whenever "the issue of jurisdictional amount ... is so closely tied to the merits of the cause"... [for otherwise] ... lest under the guise of determining jurisdiction, the merits of the controversy between the parties be summarily decided without the ordinary incidents of a trial, including the right to a jury" Wade v. Rogala, 270 F.2d 280, 285 (3rd Cir. 1959) and Fireman's Fund Ins. Co. v. Railway Express Agency, 253 F. 2d 780, 783 (6th Cir., 1958).

Some courts have suggested that District Courts have the power to value a plaintiff's unliquidated claim and/or claim for punitive damages, and to dismiss such cases (before empaneling a jury) if it appears to the judge that the jurisdictional minimum cannot be met. [See e.g. Turner v. Wilson Line, 242 F.2d 414 (1 Cir.1947) and Leehans v. American Employers Ins. Co., 273 F.2d 72 (5 Cir. 1959)].

On the other hand, other courts have refused to dismiss for lack of jurisdictional amount unless the Plaintiff's allegations were "alleged in bad faith solely to invoke federal jurisdiction, ... [or] were inflated solely to create diversity jurisdiction". Zacharia v. Harbor Island Spa, Inc., 684 F.2d 199, 202 ftnte 2 (2nd Cir., 1982). See also: Jones v. Landry, 387 F.2d 102, 105 (5th Cir 1967) ("The strictness with which the "legal certainty" test

is applied by the Supreme Court is illustrated by the case of Bell v. Preferred Life Assur. Society, 1943, 320 U.S. 238, 64 S.Ct. 5, 88 L.Ed. 15. There, the complaint alleged that the plaintiff had been induced to purchase a certificate of insurance through fraudulent misrepresentations by the defendant's agent as to its value, and claimed $200,000.00 as actual and punitive damages. The record showed that the plaintiff had paid $202.35 on the certificate and that the certificate, upon death or final surrender, had a maximum potential value of $1,000.00. Nonetheless, the court held that it was not apparent to a legal certainty that the plaintiff could not recover in addition sufficient punitive damages to make up the then requisite $3,000.00, and that it was no answer to contend that a verdict, if rendered for that amount, would be excessive and set aside for that reason.").

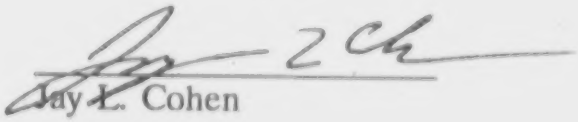
CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

DATED: July 30, 1990

Respectfully Submitted:

JAY L. COHEN, P.C.

By: 
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90-188
(2)

Supreme Court, U.S.
FILED
JUL 30 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

International Consulting Services, Inc.
Petitioner

vs.

Richard K. Gilbert, Esquire
Respondent

Petition for Writ of Certiorari

To the United States Court of Appeals
For the District of Columbia Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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68

INDEX TO APPENDICES

A Court of Appeals Order granting Summary Affirmance (3/9/90)

B District Court Opinion dismissing Action (5/18/89)

C District Court Opinion denying Reconsideration (6/16/89)

D Court of Appeals Order denying Reconsideration (5/3/90)

E Text of Constitutional And Statutory Provisions Involved

F Amended Complaint

G Excerpts, Plaintiff's Answers to Defendant's Interrogatories

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1989

No. 89-7170 C.A. No. 88-00104

International Consulting Services, Inc.,

v. Appellant

Richard K. Gilbert, Esquire

BEFORE: Ruth B.Ginsburg, Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of appellant's motion for summary reversal, the response thereto, and the reply, and appellee's motion for summary affirmance and to award Rule 38 sanctions, and the response thereto, it is

ORDERED that the motion for summary reversal be denied. It is:

FURTHER ORDERED that the motion for summary affirmance be granted substantially for the reasons stated by the district court in its orders filed May 18, 1989 and June 16, 1989. The merits of the parties' positions are so clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). It is

FURTHER ORDERED that the request for sanctions under Fed. R. Civ. P. 38 be denied. While appellant's arguments on appeal are unpersuasive, they are not so utterly lacking in merit as to warrant the imposition of sanctions.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition

of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.,	)
Plaintiff,	)
v.	) Civil Action
	) No. 88-0104
RICHARD K. GILBERT,	)
Defendant.	)

ORDER

This diversity case involves claims by the plaintiff for an alleged breach of a contract. In this order, the Court grants the defendant's motion to dismiss for failure to state a valid claim in excess of $10,000, as

required by 28 U.S.C. 1332(a), but denies his motion for an award of Rule 11 sanctions.

It is undisputed that the oral contract at issue here provided that the plaintiff would give advice with regard to certain lawsuits handled by the defendant, Mr. Gilbert, who is an attorney. If Mr. Gilbert won the case, the plaintiff would get a percentage of the award of attorney's fees; if Mr. Gilbert lost, the plaintiff would get nothing.

Count I of the complaint alleges that the plaintiff is owed approximately $14,000 in compensatory damages -- more than half of which is attributed to a case involving Mr. Roland Outlaw -- for fees owed to the plaintiff for six cases, as well as punitive damages in the amount of $100,000. Count II, pled in the alternative, alleges damages under quantum meruit

totaling $12,750 for work done on the cases, as well as a punitive damage claim for $100,000. Count III alleges "conversion of business property" -- the plaintiff claims that it has provided "intellectual work product" to Mr. Gilbert -- in excess of $100,000.[1]

The Court agrees with the defendant the plaintiff has not stated a valid claim for more than $10,000. In evaluating an amount in controversy, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283,

---

[1] This claim appears to be another alternative restatement of the first two claims -- that Mr. Gilbert received information from the plaintiff and did not pay for it. Because the relationship between the two was a contractual one, however, this case is governed by the clear terms of the contract -- the plaintiff would receive a percentage of the attorney's fees in cases that Mr. Gilbert won -- not by quantum meruit or a theory of conversion.

288-89 (1938). The Court may rely on facts presented outside the pleadings in determining whether the amount in controversy is sufficient for federal court jurisdiction. See, e.g., Biefenthal v. Civil Aeronautics Board, 681 F.2d 1039 (5th Cir. 1982).

In the instant case, it is undisputed that Mr. Gilbert did not win and did not receive any attorney's fees from the Outlaw case. Thus, it is clear that the plaintiff can make no recovery with regard to efforts expended for this case, whether or not Mr. Gilbert terminated his relationship with the defendant before, during, or after the disposition of the Outlaw case. Because the terms of the contract can and must be enforced in this case, the Court cannot resort to the use of the concept of quantum meruit to determine the amount in controversy. The amount in controversy may

be determined precisely when the terms of the contract limit the plaintiff's recovery. See, e.g., Odell v. Humble Oil & Refining Co., 201 F.2d 123 (lOth Cir. 1953). In this case, the terms of the contract bar completely the plaintiff's recovery for work on the Roland Outlaw case. Removing the amount attributable to the Outlaw case from the plaintiff's complaint, plaintiff's claims clearly amount to less than $10,000.

In deciding whether a claim was made in "good faith," a court must apply an objective test. See, e.g., Jaconski v. Avisun Corp., 359 F.2d 931, 934 (3d Cir. 1966); 14A C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure 3702 (p. 55) (1977). Because the basic facts of the outcome of the Outlaw case must have been, or should have been, known to the plaintiff and its attorney, the Court concludes that the claim of

damages relating to the Outlaw case were not made in good faith.

Excluding the amounts requested for the Outlaw case from the plaintiff's complaint, the only way that the amount in controversy could exceed $10,000 is through the claim of punitive damages. A court must scrutinize closely a claim of punitive damages when it is used to satisfy the amount in controversy requirement, Kahal v. J.W. Wilson & Associates, Inc., 673 F.2d 547, 548 (D.C. Cir. 1982), and must not allow an unjustified claim of punitive damages to "shoehorn" a case into federal court. Id. at 549. Considering the undisputed facts presented to the Court, the Court believes that punitive damages clearly are not available in this case. Punitive damage awards in breach of contract cases are very rare in the District of Columbia. Id. at 548

("punitive damages are not recoverable in a contract action simply because defendant breached with a bad intent"). The Court believes that this case, like nearly all other contract cases, cannot give rise to punitive damages.

Accordingly, it is

ORDERED that the defendant's motion to dismiss is GRANTED and this case is DISMISSED without prejudice.

However, the Court also concludes that the actions of the plaintiff and its attorneys have not been egregious enough to justify the award of Rule 11 sanctions to the defendant.

Accordingly, it is

ORDERED that the defendant's motion for

Rule 11 sanctions is DENIED.

_____ _____

Date George H. Revercomb, Judge

Attorney for Plaintiff:
Jay L. Cohen
2000 L St., NW
Washington, DC 20036

Attorney for Defendant:
Richard K. Gilbert
307 "G" St., NW
Washington, DC 20001

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1989

No. 89-7170 C.A. No. 88-00104

International Consulting Services, Inc.,

v. Appellant

Richard K. Gilbert, Esquire

BEFORE: Ruth B.Ginsburg, Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of Appellant's Petition for Rehearing, filed April 5, 1990, it is

ORDERED by the Court, that the Petition is denied

Per Curiam

(Appendix C-1)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action
	)	No. 88-0104
RICHARD K. GILBERT,	)	
Defendant.	)	

ORDER

The plaintiff in this diversity case has moved to have the Court reconsider its dismissal of the case for lack of subject matter jurisdiction, based on failure to meet the $10,000 amount in controversy requirement of

28 U.S.C. 1332(a). The only ground for reconsideration is that there exists another case--Morris v. Brown, pending before the United States Court of Appeals for the District of Columbia Circuit -- on which the plaintiff now claims he did work for the defendant and because of which the plaintiff now claims he is owed money by the defendant. Even in the amended complaint of February 18, 1989, however, the plaintiff claimed only $4,575.54 for his work on the Morris case -- not enough to reach the $10,000 minimum, even if combined with the plaintiff's other viable claims. Moreover, pursuant to the contract between the parties, the plaintiff is not owed anything until the defendant has received attorney's fees for a case. It appears that the defendant has received nothing in attorney's fees for his work on the Morris case.

Thus, the plaintiff cannot make a claim for money that he says he would be entitled were the defendant to be awarded attorney's fees at some time in the future.

Accordingly, it is

ORDERED that the plaintiff's motion for reconsideration is DENIED.

_____ _____

Date George H. Revercomb, Judge

Attorney for Plaintiff:
Jay L. Cohen
2000 L St., NW
Washington, DC 20036

Attorney for Defendant:
Richard K. Gilbert
307 G St., NW
Washington, DC 20001

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment, U.S. Constitution:

No person shall...be deprived of life, liberty or property, without due process of law.

Seventh Amendment, U.S. Constitution:

In Suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

28 U.S.C. 1332:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds

the sum or value of $10,000, exclusive of interest and costs, and is between

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. ...

(Appendix E-2)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING
SERVICES INC.

Plaintiff

v. Case No. CA 88-104
(Revercomb, J.)

RICHARD K. GILBERT

Defendant

AMENDED COMPLAINT

COMES NOW the Plaintiff, INTERNATIONAL CONSULTING SERVICES, INC. (ICS), by and through counsel, MARC EMDEN, PA, and hereby files this claim against RICHARD K. GILBERT, ESQUIRE, Defendant, and for reasons therefore asserts the following:

BACKGROUND

1. Abraham Mazur is Vice President of ICS,

a business organized and incorporated under the laws of the State of Maryland, with its principal place of business in Maryland.

2. Defendant, RICHARD K. GILBERT, ESQUIRE, is a citizen of the District of Columbia.

3. Jurisdiction regarding all claims and issues raised in this complaint is conferred upon this Court by virtue of 28 U.S.C. sec. 1332 (a) (1), diversity jurisdiction.

4. This complaint involves a matter in controversy in which the sums claimed exceed ten thousand dollars ($10,000), exclusive of interest and costs.

5. Abraham Mazur is fifty percent shareholder of and vice-president for Plaintiff ICS. Mazur is an expert on social security disability claims.

6. Abraham Mazur received a J.D. degree by Georgetown University in 1954.

7. After retirement, Abraham Mazur, as principal for ICS, was engaged by various attorneys in the Washington metropolitan area to assist these attorneys in the presentation and litigation of various disability claims.

COUNT I
(Breach of Contract)

1. On or about November 1, 1983 Abraham Mazur, as agent of Plaintiff for ICS, contracted with the Defendant to provide the Defendant with legal support assistance in claims relating to Social Security disability claims; Victim of Crime Compensation Matters; Social Security Disability Claims; Civil Service Disability Retirement; Federal Employee Workman's Compensation; Medical Malpractice4.

2. Plaintiff's duties were, among others, to review any of the claims referred to in the preceeding

paragraph for merit, to research applicable laws, regulations and case law, to write pleadings and other legal memoranda in order to assist defendant's presentation of these claims before administrative and civil tribunals to secure awards and any other relief.

3. In consideration of Plaintiff ICS's legal expertise, Defendant agreed to pay Plaintiff fifty percent (50%) of all attorneys fees recovered on behalf of cases which the Plaintiff assisted. This fee was to be contingent upon the client prevailing at the hearing or trial level and upon the approval of payment of legal fees by the applicable tribunal.

4. Defendant agreed to act as the general supervisor of all work which he then designated to Plaintiff, ICS. This work frequently involved complex and challenging legal issues concerning a variety of Federal

Statutes such as the Federal Employees Compensation Act as it related to administrative bodies or Federal Agencies.

4. Plaintiff was treated Defendant Gilbert as an independent contractor who held out the Plaintiff to potential and actual clients to be defendant's paralegal assistant and consultant for various legal matters.

5. Defendant Gilbert, in recognition of Plaintiff's expertise and assistance in acknowledging the additional dimension of legal services the Defendant could then offer clients by virtue of his agreement with the Plaintiff, placed advertisements and other announcements boasting of Defendant's ability to handle disability matters.

6. On or about January 15, 1985 Plaintiff was preparing a brief on the matter of Roland Outlaw which was due to be filed with the Court of Appeals by no later

than January 22, 1985.

7. At noon on January 16, without warning, the Defendant fraudulently and with malice advanced the due date for completion of the Plaintiff's work on this brief to the 19th, hoping that Plaintiff would be unable to complete this mammoth project thus giving the Defendant a pretext to terminate the Plaintiff's services with the Defendant.

8. On January 16th, 1985 while Plaintiff attempted to comply with this unrealistic deadline, the Defendant advised the Plaintiff he now wanted the brief by 5 p.m. on January 17, 1985.

9. Defendant's ostensible reason for requesting the brief be done at further earlier date was that the Defendant had a trial to attend on Friday, January 18, and would thus need the brief in his hands prior to that

date in order to review it.

10. Defendant's actual reason for requesting the completion of the Outlaw brief on this further earlier date, however, was that Defendant knew that the Plaintiff could not in any stretch of the imagination complete the brief within the new alloted time, thus providing Defendant with a stronger pretext upon which to terminate the Plaintiff's services with Defendant.

11. The Defendant also continued to heap additional work upon the Plaintiff making it impossible to complete this Herculean project.

12. Plaintiff nevertheless submitted as much of the brief as he was able to complete to the Defendant at the close of business on January 17. This appeared to be satisfactory to the Defendant.

13. However, by telephone call on the evening of January 17, 1985, the Defendant informed Abraham Mazur, vice president for Plaintiff ICS, that ICS's services were no longer required. This termination was without just cause or reason and was based upon malicious intent to breach the contract and was not the result of any failure or performance on the part of the Plaintiff, ICS.

14. The wrongful and malicious termination by Defendant of this working agreement between the parties has resulted in and continues to result in failure to pay various and outstanding fees and compensation concerning work done by the Plaintiff for Defendant's cases. These services total more than fourteen thousand dollars ($14,000) as listed below (excluding expenses):

a. Ransom Webb	$	715.95
b. George Sweeney		250.00

c. Muriel Brewster	75.00
d. Edna Sykes-Smith	1,125.00
e. Roland Outlaw	7,421.06
f. James Morris	4,575.54
TOTAL	$ 14,162.55

15. Defendant's wrongful and premature termination of ICS from pending cases over which ICS had superior expert knowledge undermined the claim and thereby compromised ICS's claim against the defendant for recovery of its contingent legal fees.

16. Plaintiff ICS was always willing and able to perform all of the services required for the various disability and other cases as agreed between the parties.

17. The contract between the parties was a continuing one.

WHEREFORE, Plaintiff, ICS, pray damages against the Defendant in the amount of fourteen thousand nine hundred twenty seven dollars ($14,927.00) as compensatory damages plus interest and costs.

WHEREFORE, the Plaintiff prays this Court to award punitive damages against the Defendant, RICHARD K. GILBERT, in the amount of $100,000.00.

COUNT II

(Reasonable value of services, Quantum Meruit)

1. The facts and allegations described in Background and the paragraphs contained in Count I are here fully realleged and incorporated as if stated herein.

2. In the alternative, that as result of Defendant's malicious, willful and wrongful termination of his agreement with the Plaintiff has unjustly enriched the Defendant at the expenses of the Plaintiff ICS.

3. That the Defendant's continued retention of

various attorney's fees properly owed to the Plaintiff is inequitable and represents Defendant's unjust enrichment.

4. That since Plaintiff was deprived of its opportunity to continue to supervise legal matters over which it was an expert, it had no opportunity to insure that the client's claims would prevail and thereby to insure final approval of attorney's fees on matters which it had worked.

5. That Plaintiff is entitled to the reasonable value of its services to the Defendant of fifty dollars ($50.00) per hour, representing the sum deemed reasonable by the parties as follows:

a. Roland Outlaw	137 hours	@ $50 an hour $6,850.00
b. Ransom Webb	5 hours	@ $50 an hour $ 250.00
c. Ralph A. Ferraiulo	3 hours	@ $50 an hour $ 150.00

d. James Morris	90 hours	@ $50 an hour $4,500.00
e. Edna Sykes-Smith	20 hours	@ $50 an hour $1,000.00
T O T A L		$12,750.00

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount of twelve thousand seven hundred fifty dollars ($12,750.00) plus interest and costs.

WHEREFORE, Plaintiff demands judgment in the amount of one hundred thousand dollars ($100,000.00) as punitive damages.

COUNT III
(Conversion of business property)

1. The facts and allegations described in Background and Counts I and II above are fully realleged

and incorporated as if fully stated herein.

2. The work product, research, formulation of theories and approaches, written material, pleadings and other matters which were the sole intellectual work product of Plaintiff ICS in its rendering of services to Defendant Gilbert constituted the delivery of corporate property of Plaintiff ICS to Defendant Gilbert. This creative product has considerable proprietary value.

3. Defendant Gilbert was aware, or should have been aware in the exercise of reasonable care consistent with the standards of his profession, that upon termination of the services of ICS by Defendant on January 17, 1985, Defendant Gilbert was in the possesion of items of ICS corporate property related to the delivery of its research and writing services to Defendant.

4. On January 17, 1985, Abraham Mazur on behalf of ICS advised Defendant that he was no longer authorized to utilize in any way, shape, or form, the business property of ICS in the possession of the Defendant.

5. Nevertheless, Defendant used the business property of ICS, without authorization, permission, or consent, to his own use and enrichment, for his own benefit and purposes, and without compensation to ICS, thus converting ICS property to his own and using it as his own.

6. Plaintiff has reason to believe that Defendant has continued in the unauthorized use of the business property of ICS for his own benefit.

7. This unauthorized use by Defendant, if it has ocurred, has been without notice to ICS and without

compensation to it.

8. Plaintiff ICS has suffered considerable damage in the unauthorized and uncontrolled use of its business property by Defendant and is entitled to fair market value for the use of such property.

WHEREFORE, Plaintiff ICS prays a judgment against the Defendant, RICHARD K. GILBERT, in the amount of one hundred thousand dollars ($100,000.00) as compensatory damages plus interest, costs and attorney's fees.

MARC RICHARD EMDEN, P.A. #370604
51 Monroe Street, Suite 503
Rockville, MD 20850
Tel. (301) 762-3770

REQUEST FOR JURY TRIAL

Plaintiff ICS hereby requests a trial by jury on all issues raised herein.

MARC RICHARD EMDEN, P.A.

(Appendix F-16)

********** EXCERPTS **********

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action
	)	No.88-0104(GHR)
	)	
RICHARD K. GILBERT, ESQ.	)	
	)	
Defendant	)	

PLAINTIFF'S ANSWERS TO INTERROGATORIES

Plaintiff Corporation INTERNATIONAL CONSULTING SERVICES, INC., responds to the Interrogatories propounded by Defendant, as follows:

1. Please name the person or persons actually answering these interrogatories.

ANSWER - Abraham N. Mazur.

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3. Please state the number of employees of Plaintiff

Corporation and indicate what percentage provide direct services to Plaintiff's clients or customers.

ANSWER - One (1) - Abraham N. Mazur (100%).

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10. Please describe for each person named in Interrogatory 7 any employment, other than in Plaintiff's employ, of a legal nature to include the organization or institution, the dates and the location of the employment, the nature of the work performed, and the reasons for leaving.

ANSWER - Mr. Mazur began working for the Social Security Administration in 1948. He worked from that date until 1954 as a Claims Examiner in the Washington, D.C. (District) Office, interviewing claimants and performing initial level adjudications of Old Age and Survivors' Insurance Claims. From 1954 to 1956, he worked in the Birmingham, Alabama Payment (Regional) Center as a Claims Reviewer, approving, denying and/or developing further information on Old Age and Survivors' Insurance Claims. From 1956 to 1976, Plaintiff worked in the Social Security Administration (National) Headquarters in Woodlawn, Maryland, in the Bureau of Disability Operations. During this later time period Mr. Mazur was successively, a Disability Examiner, a Disability Reconsideration Examiner, and a Disability Legal Assistant.

In June 1976, Mr. Mazur suffered a severe heart attack and his wife, Marie Mazur, was told by the attending cardiologist that Mr. Mazur had less than five years to live. Mr. Mazur thereupon retired on disability by the United States Government.

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12. If you contend that there was one contract governing the professional relationship between Defendant and Mr. Mazur, please state the following:

a. the date and location of the contract,
b. the persons actually making the contract,
c. whether the contract was reduced to writing, and
d. the terms of the contract, to include:
(1) the contract's duration,
(2) the compensation scheme,
(3) the services to be performed by Mr. Mazur, and
(4) the supervision to be provided by Defendant.

ANSWER: A verbal agreement was reached between the parties in December 1983 at 1000 Connecticut Avenue, NW, Washington, D.C. The contract was never formally reduced to writing but memoranda of its terms and conditions do exist. Specifically, there were two relevant "duration" dates under the contract. (1) The Plaintiff was to provide disability consulting services on all matters generated by Defendant's new yellow pages ad and other efforts at marketing this new specialty. Once a specific case was accepted, work under that case was to continue until its final legal adjudication. (2) Plaintiff's compensation was to be one-half of

all attorney's fees generated in the cases under which Plaintiff provided consulting services. Both Plaintiff's and Defendant's out-of-pocket expenses were to be paid before calculating this fee. (3) Plaintiff was to perform disability consulting services and legal support services requested by Defendant under these cases.

OBJECTION: Counsel objects to part (d)(4) of the Interrogatory. Plaintiff was an independent contractor, not an employee. Work product was "submitted" to Defendant. Work was not "supervised" by Defendant.

****

24. Please describe any work done by any employee of Plaintiff on the Ransom Webb case, to include the person or person who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted five hours and 35 minutes to this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, and Mr. Mazur's home. A detailed description of the work performed follows:

10/15/84 Client Conference in Office.
Time 20 min.

10/15/84- 10/24/84	Review Client File including Medical Endorsements. Time 3 hrs.(approx)
10/24/84	Discuss Client File With Defendant. Time 45 min.
10/24/84	Client Conference in Office. Time 45 min.
12/14/84	Conference with Defendant in Office. Time 30 min.
12/18/84	Draft Letter re: Workman Compensation Issue. Time 15 min.

25. Please describe any work done by any employee of Plaintiff on the Muriel Brewster case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work follows:

12/20/83	Initial interview with Mrs. Brewster

and discussion of case.
Time 1 hour

10/26/84 Legal research.
Time 1 hour

10/31/84 Review of Case File at Office of Hearings and Appeals.
Time 1 hour

11/8/84 Office discussion with wage-earner and Gilbert.
Time 1 hour, 45 min.

11/13/84 Research.
Time 1 hour
Expenses: Photocopy - $0.05

11/14/84 Hearing at Office of Hearings and Appeals (present as consultant to Gilbert.
Time 40 minutes

26. Please describe any work done by any employee of Plaintiff on the Mary Sweeney case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written product.

ANSWER - Plaintiff devoted six hours to this case. All work was performed by Mr. Mazur. Work was

performed at Defendant's office, Plaintiff's Office, and the Social Security District Office. A detailed description of the work performed follows:

8/16/84	Preparation of letter for Mary Sweeney to SSA District Office, Temple Hills, MD authorizing us to represent her and to transfer file to District Office at 21st and M Streets, N.W., Washington, D.C. Time 15 minutes
10/31/84	Review of files in SSA District Office. Time 45 minutes
11/5/84	Completed remainder of voluminous files at SSA District Office. Time 2 hours, 45 min.
11/9/84	Discussion of claims files with Claims Representative, Mr. Bradley. Time 1 hour
12/3/84	Conference with Mrs. Sweeney. Time 1 hour, 15 min.

27. Please describe any work done by any employee of Plaintiff on the Jane Morris case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff directed 90 hours and spent $77.20 in reimbursable out-of-pocket expenses in this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries and as consultant to Mr. Gilbert at the hearing. A detailed description of the work performed follows:

8/13/84	Review claimant's personal Blue Book file.	
	Time	2 hours, 45 min.
8/20/84	Initial interview with claimant.	
	Time	30 minutes
9/19/84	Spoke to Celestine Waters (see her letter) asking for clarification of her letter, additional points, etc. (see my note); and Geraldine Johnson (principal at Cardozo High as new source of information re. Mrs. Morris).	
	Time	20 minutes
9/19/84	Mr. Holmes, phone call.	
	Time	25 minutes
9/19/84	Two calls to Mrs. Morris discussing various aspects of her case; also referred to Mr. Holmes.	
	Time	25 minutes

10/11/84 Inspected file at Office of Hearings & Appeals. Only file there was one Childhood Disability Claim filed 1/20/84. No SSI claim, and no previous childhood disability claims.

Time 2 hours

Expenses: Parking $2.75 for me
$2.75 for Mr. Gilbert

10/30/84 Phone conversation with Richard Gilbert, Esq.

Time 30 minutes

10/30/84 Preparing draft letters for Mr. Gilbert to mail out in final form.

Time 1 hour, 30 min.

11/7/84 Reviewed file at Office of Hearings & Appeals with Jane Morris, Washington, D.C.

Time 2 hours, 45 min.

12/4/84 After Mr. Gilbert left message that material was in "District Office, "went to ALJ's Office on 5th Street, N.W. Spoke to Ms. Green, determined that their AW File didn't have it. They called and found out that file was in Pennsylvania Avenue S.E. D/O--they are sending all material, including any previous folder(s) to ALJ office, 5th Street, N.W. Attn: Ms. Green,

and she will call Mr. Gilbert or me when it comes in.
Time 30 minutes

12/10/84 Reviewed file at Hearing Office, Washington, D.C.
Time 30 minutes

12/19/84 Review of file at Hearing Office, Washington, D.C.
Time 3 hours, 25 min.

Discussion with R. Gilbert, Esq.
Time 35 minutes
Expenses: Parking - $5.50

12/21/84 Review of Blue Book evidence.
Time 45 minutes

12/22/84 Review of Blue Book evidence.
Time 2 hours

12/24/84 Calls to D/O 21st & M Sts. (Mr. Bradley & Ms. Seal, at Hearing Office, & Ms. Mitchell at District Office at 202-755-5708 to locate Jane Morris's SSI file. Jane Morris' file charged to their S.E. office, but they can't locate it. They will search further at this S.E. District Office and check with the Hearing Office.
Time 1 hour, 15 min.

Review of Blue Book Medical evidence.

Time 1 hour, 30 minutes

12/25/87 Review of Blue Book Medical evidence.

Time 3 hours, 30 min.

12/26/87 Went to D.C., Dept. of Consumer & Regulatory Affairs, Corporation Division, 641 H Street, N.W. Washington, D.C. They have no record of Consultative Examinations Inc. Box numbers no good in DC--.

Time 20 minutes

12/26/84 Hearing Office, Washington, D.C., additional folders found.

Time 4 hours, 15 min.

Expenses: Parking - $5.50

12/27/84 Completed review of Blue Book evidence and notations.

Time 4 hours, 15 min.

12/28/84 Hearing Office, 5th Street, N.W., Washington, D.C.

Time 1 hour, 45 min.

S.S. D/O, 21st & M Sts., Washington, D.C.

Time 30 minutes

Expenses: Parking $4.50 (5th St.)

Parking $4.50 (Conn. & K)
Taxi $2.00

12/31/84 Review of file at Hearing Office, Washington, D.C.
Time 5 hours, 15 min.
Expenses: Parking - $5.50

1/2/85 Hearing Office, review of file, Washington, D.C.
Time 3 hours, 35 min.
Expenses: Parking - $5.50

1/4/85 Hearing Office, review of file, Washington, D.C.
Time 5 hours, 20 min.
Expenses: Parking - $5.50

1/5/85 Further review of additional medical evidence.
Time 1 hour, 50 min.

1/7/85 Checked status of Consultative Exams, Inc., with Maryland Dept. of Assessments & Taxation in Baltimore, MD. Discovered it is an Illinois corporation authorized to operate in Maryland beginning 6/29/84 (her exam was in 2/84); not necessary to have its Illinois charter on file in Maryland. Address in Illinois is Chicago post office box; then to

Enoch Pratt Library for medical research on Crohn's disease.
Time 3 hours, 30 min.

1/8/85 Call to Mr. Gilbert to discuss Morris case. She gave him two medical reference books.
Time 15 minutes

Spoke to Mrs. Morris; she will get copies of medical texts that we need for Monday's meeting. Final preparation of file of hearing.
Time 5 hours

1/9/85 Preparing file at Hearing Office, Washington, D.C.
Time 2 hours, 50 min.
Expenses: Parking - $5.50

Preparing file at District Office, 21st & M Streets.
Time 30 minutes
Expenses: Parking - $5.50

1/10/85 Preparing file at Hearing Office, Washington, D.C.
Time 1 hour, 30 min.
Expenses: Parking - $4.60

1/11/85 Preparing and reviewing evidence for hearing.
Time 7 hours, 30 min.

1/12/85 Preparing and reviewing evidence for hearing.
AM Time 2 hours, 30 min.

Then to Washington, D.C.
PM Time 2 hours, 45 min.
Expenses: Parking - $3.60

1/13/85 Conference with Mr. Gilbert & Mrs. Morris.
Time 3 hours

1/14/85 Preparing file and evidence for hearing.
AM Time 4 hours

Pratt Library.
Time 1 hour
Expenses: Parking - $3.00

Meeting with Mrs. Morris - Washington, D.C.
Time 3 hours
Expenses: Parking - $5.50

1/16/85 Formal hearing, Hearing Office, Washington, D.C.
Time 1 hour
Expenses: Parking - $5.50

28. Please describe any work done by any employee of Plaintiff on the Edna Sykes-Smith cases, to include the

person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted 19 3/4 hours and spent $3.20 in out-of-pocket expenses on these cases. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work performed follows:

Civil Service Disability Case

7/9/84 — After Mrs. Smith's initial inquiry, we called back and discussed her situation from a Civil Service Disability Retirement viewpoint.
Time 30 minutes

7/14/84 — Further phone discussion with Mrs. Smith concerning her disabilities from a Civil Service Disability Retirement viewpoint and marital situation.
Time 45 minutes

One office visit re: Civil Service.
Time 15 minutes

8/25/84 — Review of file from Civil Service

Disability viewpoint; medical evidence, leave records, etc.
Time 30 minutes

Research of law, cases, and CFR re: Civil Service Disability.
Time 2 hours, 30 min.

8/28/84 Visit to U.S. Civil Service Retirement Headquarters (OPM) at 1900 E. Street, N.W., Washington, D.C.
Time 30 minutes

10/4/84 2 draft letters (suggested) to Mr. Gilbert for Dr. Stanley Samms and Dr. L.E. Pierce.
Time 1 hour

10/5/84 Review of Civil Service Retirement material, forms necessary for Mrs. Smith's disability retirement, etc.
Time 45 minutes

10/8/84 Review leave request folder.
Time 30 minutes

Grievance Work Condition folder (with 13 flags).
Time 55 minutes

10/10/84 Review of draft application for retirement.
Time 30 minutes

FECA Case

7/9/84 — After initial inquiry by client, we called back and got many of the background details of her case. Medical background, U.S. Government agency (EEOC). People involved-leave status-work performance, etc. Told her to send in all file material she had.

Time 45 minutes

7/14/84 — Further phone discussion with Mrs. Smith concerning the background and details of her nervous (psychiatric condition).

Time 30 minutes

7/24/84 — After being unable to locate claimant at home to proceed further with claim, or at Rhonda Smith's or through her physician, Dr. Samms, we left message with her employer, EEOC, for her to contact us. We were informed she was not in attendance. Sent her letter on 7/24/84.

Time 1 hour, 15 min.

8/8/84 — Office visit - FECA.

Time 30 minutes

8/25/84 Review of file from FECA viewpoint, including new medical evidence.

Time 45 minutes

Research on law and CFR re: FECA.
Time 45 minutes

Review of collective bargaining agreement between EEOC and AFGE--re: status of employee and her situation.
Time 30 minutes

8/27/84 Visited U.S. Dept. of Labor--Office of Workmen's Compensation, Washington, D.C.
Time 20 minutes
Expenses: Parking - $3.00

8/28/84** Interviewed with Mrs. Smith who stated she is getting a current medical report from Dr. Samms and will drop it by here (office).
Time 30 minutes
**15 minutes for FECA and 15 minutes for Civil Service Disability.

9/2/84 Sent Gilbert a suggested draft letter for him to sign and send to the psychiatrist.

Time 30 minutes

9/30/84 Checked Dr. Black's credentials--he is a Board Certified psychiatrist in the Directory of Medical Specialists.

Time 5 minutes

10/2/84 Research of law, regulations, and suggested draft letter prepared for Mr. Gilbert to send to Mary T. Jones, Office of Worker's Compensation Programs (FECA) for them to issue an Administrative Subpoena to get the needed medical information and for Ms. Jones to send us photocopies of all material, including leave records, in their files.

Time 1 hour, 45 min.
Expenses: Photocopy $0.10
copy of regulations

10/4/84 Detailed review of medical evidence plus 2 draft letters (suggested), based on law, etc., to doctors Stanley Samms and L.E. Pierce.

Time 2 hours, 15 min.

10/8/84 Reviewed white folder--leave requests--attendance--part-time status (EEOC) and claimant memoranda plus medical evidence--made 3 flags in folder of key points.

Time 30 minutes

10/11/84 Per Mr. Gilbert's instructions, tried to get Mrs. Smith at work, hasn't been seen in several days--left message for Mr. Gilbert.

Time 10 minutes

Expenses: Photocopy - $0.10

29. Please describe any work done by any employee of Plaintiff on the Ralph Ferraiuolo cases, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted 16 1/2 hours on these cases. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work performed follows:

4/29/84-
4/30/84 Review of Medical Records and Research of Applicable Law, Regulations and case law.

Time 10 hours

5/14/84 Discussion of case with Gilbert.

Time 3 hours, 30 min.

5/22/84 Legal Research.
Time 2 hours, 10 min.

5/23/84 Legal Research.
Time 35 minutes

6/4/84 Memo to Defendant containing suggestions regarding case.
Time 15 minutes

30. Please describe any work done by any employee of Plaintiff on the Roland Outlaw case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written product.

ANSWER- Plaintiff devoted 137 hours and spent $119 in out-of-pocket expenses on this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work follows:

8/3/84 U.S. Court House--examination of both case files C.A. No. 83-3886 and 81-0363.
Time 3 hours
Expenses: $5.50 parking

8/4/84 Baltimore County Law Library--Review of the law and pertinent

regulations.
Time 3 hours, 20 min.

8/10/84 University of Baltimore Law Library - research of cases and regulations.
Time 4 hours

8/11/84 Review of PL 97-455 (1/12/83) re: continued payment of disability benefits during appeal.
Time 30 minutes

8/12/84 (Sunday) - Further review of record and cases.
Time 1 hour, 15 min.

8/13/84 Further research.
Time 15 minutes

8/13/84 Call to Pratt Library re: legislative history of PL 97-455.
Time 15 minutes

8/14/84 Research and review of conference at U.S. Court House, U.S. Circuit Court of Appeals for D.C., and U.S. District Court for D.C.
Time 4 hours, 30 min.
Expenses: $5.50 parking

8/15/84 Research at Enoch Pratt Library on legislative history of PL 97-455.
Time 1 hour, 15 min.

8/16/84 Telephone discussion with Mr. Gilbert re. legislative history re: PL-97-455.
Time 15 minutes

8/18/84 Phone call to Enoch Pratt Library, Baltimore, MD, re. PL 98-118 and its legislative history; also preparation of statement for wage earner to present to SS D/O that he requests continued DIB and SSI payments due him on appeal under PL 97-455, PL 98-118, and a recent Supreme Court decision.
Time 45 minutes

8/19/84 Visit to University of Baltimore Law Library - research re. appellate procedure, admission of attorney, proper forms, etc.
Time 2 hours, 15 min.

8/27/84 Office of Clerk of Court, spoke to Mrs. Jordan who was able to straighten out and bring together papers for files on CA 83-3886 and 81-0363.
Time 1 hour
Expenses: Parking - $2.00

8/27/84 Waited for Mrs. Colchico (U.S. Court of Appeals) who was supposed to return momentarily, but did not.

Time 15 minutes

9/10/84 U.S. Court House - Preparation of brief.
Time 4 hours
Expenses: Parking - $5.50

9/12/84 Preparation of draft brief.
Time 3 hours, 45 min.

9/13/84 Preparation of draft brief.
Time 1 hour, 15 min.

9/14/84 Preparation of draft brief.
Time 1 hour, 30 min.

9/15/84 University of Baltimore Law Library - case research and preparation of brief.
Time 3 hours, 45 min.

9/17/84 Preparation of draft brief.
Time 3 hours, 45 min.

9/18/84 Preparation of draft brief.
Time 2 hours

9/19/84 Preparation of draft brief.
Time 1 hour, 15 min.
Expenses: Typing - $27.93
Photocopies - $1.80

9/20/84 Preparation of draft brief.

Time 2 hours, 15 min.

9/21/84 Review of draft brief.
Time 1 hour

9/21/84 Discussion of draft brief with Mr. Gilbert (morning phone call to home).
Time 30 minutes

9/26/84 Obtained Conference Report 98-1039.
Time 1 hour, 30 min.

Worked on constitutional issues, Matthew v. Eldridge.
Time 1 hour

9/28/84 Review of conference report of HR 3755 and research of case law.
Time 3 hours, 15 min.

9/29/84 Research case law considering 1984 amendments (conference report).
Time 1 hour

11/8/84 Legal research per additional suggestions of University of Baltimore.
Time 1 hour, 15 min.

11/10/84 Work on draft of brief.
Time 4 hours, 15 min.

11/11/84 Work on draft of brief.

Time 6 hours, 30 min.

11/12/84 Work on draft of brief.
Time 2 hours

11/14/84 Work on draft of brief.
Time 6 hours
Expenses: Typing - $21.00
Photocopies - $2.20

11/15/84 Work on draft of brief.
Time 4 hours

11/20/84 Work on draft of brief.
Time 4 hours

11/21/84 U.S. Court House, worked on 81-0363 but 83-3886 unavailable or lost or misfiled. Notified Mr. Gilbert and he will file motion on Friday 11/23/84 for continuance.
Time 2 hours, 30 min.
Expenses: Parking - $5.50

11/22/84 Writing draft brief.
Time 4 hours, 30 min.

11/23/84 Research at University of Baltimore Law Library.
Time 1 hour, 10 min.

Writing of final draft brief.
Time 4 hours, 45 min.

11/24/84 Writing of final draft brief.
Time 3 hours, 45 min.

11/25/84 Writing of final draft brief.
Time 5 hours, 15 min.

11/26/84 Work on final brief, round trip to Washington, D.C. office.
Time 2 hours, 45 min.
Expenses: Parking - $3.60

12/3/84 Review of file at Court House.
Time 3 hours
Expenses: Parking - $5.50

12/7/84 Review of file at U.S. Court House.
Time 3 hours, 15 min.
Expenses: Parking - $5.50

12/10/84 Review of file at U.S. Court House.
Time 3 hours, 30 min.
Expenses: Parking - $5.50

12/12/84 Review of file and consideration of news articles regarding new pertinent regulations.
Time 45 minutes

12/13/84 Rewriting of brief.
Time 2 hours, 30 min.

12/14/84 Conference at U.S. Court House with

Mr. Gilbert re: missing file.
Time 2 hours
Expenses: Parking - $5.50

12/16/84 Typing $36.75

1/8/85 Call to Mr. Gilbert re: new motion and medical report of 5/26/83 of Dr. Cook.
Time 15 minutes

1/14/85 Research at U.S. Court House (additional folder found).
Time 3 hours
Expenses: Parking - $5.50

1/15/85 Research at U.S. Court House.
Time 4 hours, 30 min.
Expenses: Parking - $5.50

Research Baltimore County Law Library.
Time 1 hour, 40 min.

1/17/85 Research at U.S. Court House.
Time 5 hours, 45 min.
Expenses: Parking - $5.50

Meeting at office, 5:00 PM, to hand Mr. Gilbert additional information.
Time 15 minutes

****

41. Please list all compensation actually paid by Defendant to Mr. Mazur and the case to which it applied.

ANSWER - No compensation was paid by Defendant to Mr. Mazur. Defendant did pay the following amounts to Plaintiff:

(1) Yvonne Knight - $534.40.

(2) Edna Sykes-Smith - $375.00.

****

47.State the facts upon which you rely in support of your contention that Defendant acted fraudulently and maliciously in requesting from Mr. Mazur an acceptable copy of a brief in the Roland Outlaw case by January 17, 1985.

ANSWER: Throughout the Fall and Winter of 1984 Defendant constantly expressed satisfaction with Plaintiff's work. Unknown to Plaintiff at the time, in December 1984 Defendant signed a contract for a second yellow pages ad. This ad omitted the line "Expert Consultant Available."

On December 24, 1984 Defendant told Plaintiff that he was happy with Plaintiff's work, but that he wanted to change the financial agreement between them beginning sometime in the Spring of 1985. He assured Plaintiff that all currently pending cases

would, of course, be in accordance with their 50-50 fee agreement.

These assurances were made in order to induce Plaintiff's faithful assistance during the critical months of December 1984 and January 1985 in four "large fee" cases, Sykes, Morris, Outlaw, and Webb. Plaintiff provided expert assistance in all four of these cases, helping prepare them as follows:

Sykes: Review and analysis of Case, development of expert testimony and preparation of case for application and hearing.
Morris: Review and analysis of Case, discussions with Morris and Gilbert, preparation for hearing held January 16, 1985.
Outlaw: Review and Analysis of Record, and development of legal arguments for brief.
Webb: Review and Analysis of Record, suggested testimony by Webb's attending physician at the Administrative Law Judge Hearing.

See also Answer to Interrogatory 48 supra.

48. State the facts upon which you rely in support of your contention that Plaintiff stated reason for requesting an acceptable copy of the brief in the Roland Outlaw Case by January 17, 1985 was pretextual.

ANSWER: Defendant had told Plaintiff that the brief in the Roland Outlaw case was due on January 22, 1985. Plaintiff and Defendant were

planning to meet in Defendant's office on January 21, 1985 in order to finish the brief together.

About a week or two before January 22, 1985, Defendant informed Plaintiff that they could not finish the brief on January 21, 1985, because the D.C. Law Library would be closed that day. Mr. Mazur pointed out that other area libraries would be open that day if additional research was necessary. However, Defendant was steadfast in his decision to finish the brief prior to that date, Defendant asked Plaintiff to finish his review, research, and preliminary drafts by noon on Saturday, January 19, 1985. Mr. Mazur agreed to do so, agreed to call Defendant at home when these items were ready, and agreed to work together with Defendant Saturday afternoon until the brief was finalized.

Notwithstanding this previously agreed to timetable, after the Morris hearing was completed on January 16, 1985, Defendant told Mr. Mazur (1) that he expected a "final brief" rather than Mr. Mazur's usual draft arguements and (2) that he needed this "final brief" by close of business the next day.

Mr. Mazur had never agreed to provide a "final brief" and had never done so previously in any other case. Indeed, the requirement of preparing a "final brief" in one day's time was obviously pretextual considering both the facts noted above and Defendant's hiring of Ms. Turrell, an attorney, in December, 1984 to assist on the brief.

See also Answers to Interrogatories 47 and 49.

49. Please identify the "additional work" you contend Defendant "heaped" upon Mr. Mazur, making it impossible for him to complete the brief in the Roland Outlaw case.

ANSWER: (1) To immediately review a newly discovered court folder, while at the same time instructed Ms. Turrell to review that same folder and to deny Plaintiff timely access thereto, and (2) to prepare a "final brief."

50. State the facts upon which you rely in support of your assertion that Defendant was satisfied with Mr. Mazur's work product in the Roland Outlaw case on January 17, 1985.

ANSWER: Defendant did not criticize Plaintiff's work product on January 17, 1985. To the contrary, Defendant asked Plaintiff to assist with a new client matter scheduled to commence on January 21, 1985.

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54. If you contend that Plaintiff or Mr. Mazur remained willing to perform legal support services for Defendant after January 17, 1985, please what you contend is the legal significance of the telegrams sent by Mr. Mazur on behalf of International Consulting Services, Inc., on January 17, 1985, in which Mr. Mazur forbade

Defendant to use any work product produced by him or International Consulting Services, Inc.

ANSWER: On January 17, 1985 Defendant breached said agreement. The legal significance of said telegrams was to preserve Plaintiff's rights and to mitigate damages in the face of this breach.

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